

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARYL MANSON,

Plaintiff,

v.

THE LOW INCOME HOUSING
INSTITUTE,

Defendant.

No. C07-0977JLR

ORDER

On November 27, 2007, plaintiff filed a motion for “Change of Judge” in the above-captioned matter. Dkt. # 32. The Honorable James L. Robart, United States District Judge, declined to recuse himself voluntarily and referred the motion to the undersigned for review. Dkt. # 34. Plaintiff’s motion is now ripe for review by this Court pursuant to Local General Rule 8(c).

Section 455 of title 28 of the United States Code governs the disqualification of a district judge. It states in relevant part: “Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge

ORDER

1 shall proceed no further therein, but another judge shall be assigned to hear such
2 proceeding. The affidavit shall state the facts and the reasons for the belief that
3 bias or prejudice exists.

4 A judge must recuse himself if a reasonable person would believe that he is unable to be
5 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). This is an
6 objective inquiry regarding whether there is an appearance of bias, not whether there is bias in
7 fact. Preston v. United States, 923 F.2d 731, 734 (9th Cir. 1992); United States v. Conforte, 624
8 F.2d 869, 881 (9th Cir. 1980); See also In Liteky v. United States, 510 U.S. 540 (1994)
9 (explaining the narrow bases for recusal).

10 A litigant may not, however, use the recusal process to remove a judge based on
11 adverse rulings in the pending case: the alleged bias must result from an extrajudicial source.
12 United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986). Plaintiff argues that he has
13 adequately stated a claim for relief and disagrees with Judge Robart's dismissal of his complaint.
14 Plaintiff does not assert, much less show, that the presiding judge has any personal bias against
15 him. Nor has he identified any extrajudicial source of the implied prejudice. The only evidence
16 of bias presented is Judge Robart's dispositive ruling in this case. In such circumstances, the
17 risk that the litigant is using the recusal motions for strategic purposes is considerable. See Ex
18 Parte American Steel Barrel Co. and Seaman, 230 U.S. 35, 44 (1913). Because a judge's
19 conduct in the context of judicial proceedings does not constitute the requisite bias under 28
20 U.S.C. § 144 or § 455 if it is prompted solely by information that the judge received in the
21 context of the performance of his duties as the presiding judicial officer,¹ plaintiff has not met
22 his burden of showing an appearance of bias.

25 ¹ Objections to a judge's decisions are properly raised through an appeal, not a motion to recuse.
26

Dated this 10th day of December, 2007.

Robert S. Lasnik
Chief Judge, United States District Court